



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOV 18 2016

Ambrosio Hernandez

Pharr, Texas 78577

RE: MUR 6944

Dear Ambrosio Hernandez:

The Federal Election Commission reviewed the allegations in your complaint received on June 17, 2015. On November 14, 2016, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion to dismiss the allegations and close its file in this matter. Accordingly, the Commission closed its file in this matter on November 14, 2016.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). A copy of the Factual and Legal Analysis is enclosed for your information.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson
Acting General Counsel

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jose A. Farias MUR 6944
Aquiles J. Garza
Mario Bracamontes
Arturo J. Cortez
Integrated Border Services

I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by Jose A. Farias, Aquiles J. Garza, Mario Bracamontes, Arturo J. Cortez, (the "Candidates"), and Integrated Border Services ("IBS"). It was scored as a low-rated matter under the Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complaint alleges that the Candidates violated the Act and Commission regulations by accepting a \$100 contribution from a foreign entity, IBS. Compl. at 1. The Complaint claims that the Candidates' disclosure reports filed with the City of Pharr, Texas, show that the \$100 contribution came from an address in Reynosa, Mexico.¹ *Id.*

The Candidates acknowledged receiving IBS's \$100 contribution on February 18, 2015, and admit that the contribution check showed a Mexican address. Resp. at 1. The Candidates

¹ The Complainant submitted campaign finance reports from the Candidates as attachments to the Complaint; the included reports list a \$100 contribution from IBS, received February 18, 2015. Compl., Attach. 1 at 16, 33, 50, 67.

1 argue that IBS is a Texas Limited Liability Company, and the funds were drawn from a United
2 States bank.² *Id.* at 1, 3-4. They state that IBS has its registered address in Texas, and “like
3 many businesses in [the] border community,” it operates in both Texas and Mexico. *Id.* at 3-4.
4 The Candidates did not believe the contribution was prohibited, but refunded it on May 1, 2015,
5 before the Complaint was filed, “out of an abundance of caution.” *Id.* at 1, 4. The Candidates
6 attached a copy of the refund check issued to IBS, but not the contribution check itself.³ *Id.* at 6;
7 IBS did not file a response.

8 **B. Legal Analysis**

9 The Act and Commission regulations prohibit a foreign national from making a
10 contribution — directly or indirectly through any other person — in connection with an election
11 to any political office.⁴ The term “foreign national” includes “a partnership, association,
12 corporation, organization or other combination of persons organized under the laws of or having
13 its principal place of business in a foreign country.”⁵ The Commission’s regulations further
14 provide that a “foreign national shall not direct, dictate, control, or directly or indirectly
15 participate in the decision-making process of any person . . . with regard to . . . election-related
16 activities.”⁶ This prohibition includes “decisions concerning the making of contributions,
17 donations, expenditures, or disbursements.”⁷ The Act’s prohibition against contributions by

² The Response included a Certificate of Fact from the Office of the Secretary of State of Texas, certifying that IBS filed Articles of Organization as a domestic LLC in Texas in 2001, and that its registered address is in Hidalgo, Texas. *Id.* at 5.

³ The campaign finance reports that the Complainant submitted as a supplement to the Complaint list this \$100 payment made to IBS on May 1, 2015, under “Campaign Expenses.” Compl., Attach. 2 at 4, 12, 31, 37.

⁴ 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c).

⁵ 52 U.S.C. § 30121(b)(1); 22 U.S.C. § 611(b).

⁶ 11 C.F.R. § 110.20(i).

⁷ *Id.*

1 foreign nationals applies to any election for political office, including state and local offices.⁸

2 Additionally, the Act also prohibits persons from knowingly soliciting, accepting, or receiving a
3 contribution or donation from a foreign national.⁹

4 The available information is insufficient to determine whether IBS is a foreign national
5 entity.¹⁰ IBS is an LLC registered in Texas, however, it also operates in Mexico, and there is no
6 information, other than the Candidates' assertion, that its registered office in Texas is its
7 principal place of business. Even if IBS is not a foreign national entity, there is no information
8 indicating whether foreign nationals participated in the decision to make the contribution. As to
9 the Candidates, the \$100 check they received bore a Mexican address, and they refunded the
10 contribution about 70 days after they received it, several weeks before the Complaint was filed,
11 but apparently after the time provided for in the Commission's regulations.¹¹

12 Under these circumstances, and in light of the *de minimis* amount at issue, and in
13 furtherance of the Commission's priorities relative to other matters pending on the Enforcement
14 docket, the Commission exercises its prosecutorial discretion and dismisses the allegations
15 pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁸ *United States v. Kanchanalak*, 192 F.3d 1037, 1049 (D.C. Cir. 1999) (concluding that the Commission has consistently interpreted 2 U.S.C. § 441e (now 52 U.S.C. § 30121) as applicable to federal, state, and local elections).

⁹ See 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(a)(4), (g). The Commission's regulations provide that "knowing" acceptance of a foreign national contribution in violation of the Act includes circumstances in which a person is "aware of facts that would lead a reasonable person to inquire whether the source of funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry."
11 C.F.R. § 110.20(a)(4)(iii). Here, the Respondents admit that the contribution check bore a Mexican address, which likely would have led a reasonable person to inquire whether the contributions came from a foreign national.

¹⁰ IBS did not respond to the Complaint. See *supra*, footnote 2, Texas Secretary of State Certificate of Fact.

¹¹ See 11 C.F.R. § 103.3(b)(2).